

STUART F. DELERY  
Assistant Attorney General  
ELIZABETH J. SHAPIRO  
Deputy Branch Director  
Federal Programs Branch  
KATHRYN C. DAVIS (DC Bar #985055)  
Trial Attorney  
Federal Programs Branch  
U.S. Department of Justice, Civil Division  
20 Massachusetts Avenue, N.W., Room 6130  
Washington, DC 20530  
Tel.: (202)616-8298  
Fax: (202)616-8460  
Email: Kathryn.C.Davis@usdoj.gov  
*Counsel for Defendants*

## *Counsel for Defendants*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

**ELECTRONIC FRONTIER FOUNDATION,** )  
Plaintiff, ) Case No.: 4:09-cv-03351-SBA  
v. ) ) **Declaration of Kathryn C. Davis**  
**CENTRAL INTELLIGENCE AGENCY, et al.,** )  
Defendants. )

1. I am a trial attorney in the Federal Programs Branch of the Civil Division of the United States Department of Justice. The statements in this declaration are based on my personal knowledge and information that I have obtained in my official capacity.

2. On November 21, 2011, and April 11, 2012, respectively, Defendants the Department of Homeland Security, the Department of Defense, the National Security Agency, the Department of Justice, and the Office of the Director of National Intelligence (“Defendants”) and Plaintiff filed cross-motions for summary judgment [ECF Nos. 63, 76] in this Freedom of Information Act (“FOIA”) case.

1       3. On September 30, 2013, this Court entered an order [ECF No. 81] granting in part  
 2 and denying in part Defendants' motion for summary judgment and denying Plaintiff's cross-  
 3 motion for summary judgment.

4       4. The Court's Order requires, *inter alia*, that Defendants release the information  
 5 that the Court has not determined was properly withheld or provide satisfactory supplemental  
 6 *Vaughn* indices and declarations. The Court's Order required Defendants to serve Plaintiff with  
 7 any supplemental materials by no later than sixty (60) days from the date the Order was filed.  
 8 The Order further required the parties to meet and confer regarding any supplemental materials  
 9 in an attempt to narrow the documents at issue. If the parties are unable to resolve their disputes  
 10 regarding any withheld information, the Court's Order required the parties to file a stipulation by  
 11 no later than thirty (30) days after service of the supplemental materials proposing the timing of  
 12 further proceedings.

13       5. Pursuant to stipulations by the parties, on November 20, 2013, and February 19,  
 14 2014, this Court entered orders [ECF Nos. 84, 86] modifying the deadlines set forth in the  
 15 September 30th Order. Accordingly, the deadline to serve any supplemental materials is  
 16 currently set for March 21, 2014. The parties' deadline to file the stipulation required by the  
 17 Order is currently set for April 21, 2014.

18       6. Defendants the Department of Defense ("DOD") and the Department of Justice,  
 19 specifically its component the Federal Bureau of Investigation ("FBI"), have been working  
 20 diligently to comply with the Court's Order. However, DOD and FBI will require a short  
 21 extension of time, up to and including March 25, 2014, and April 4, 2014, respectively, to  
 22 finalize and submit their supplemental materials. DOD is in the process of finalizing its  
 23 supplemental *Vaughn* submission. The review of the documents on which the supplemental  
 24 declaration is based required coordination among numerous DOD components with equities in  
 25 the classified information at issue. This review process was complex and DOD requires a short  
 26 period of additional time to finalize and confirm the accuracy of all elements of the declaration.  
 27 Accordingly, a two-day extension of time, up to and including March 25, 2014, is sought to

allow DOD to comply with the Court’s Order. FBI’s need for this brief extension is due to the unavailability of FBI’s declarant, David M. Hardy. Despite its best efforts, FBI was unable to finalize its declaration and index prior to Mr. Hardy’s absence from the office. He is currently unavailable through March 24, 2014. Accordingly, a two-week extension of time, up to and including April 4, 2014, is sought to allow FBI to comply with the Court’s Order.

6       7. Defendants do not herein seek to modify the deadline for the Office of the  
7 Inspector General of the United States Army (“DAIG”), Department of Homeland Security  
8 (“DHS”), and the Office of the Director of National Intelligence (“ODNI”) to comply with the  
9 March 21, 2014, production deadline. Moreover, Defendants do not seek to modify the deadline  
10 for the parties to submit the stipulation required by the Court’s Order, and that deadline should  
11 remain to be thirty (30) days after Defendants complete the service of any supplemental  
12 materials. Under the modified schedule agreed upon by the parties, the new deadline for  
13 submitting the stipulation would be May 5, 2014 (the 30th day after April 4, 2014, is Sunday,  
14 May 4, 2014, and so filing would occur on the next business day).

15        8.        As noted above, this is the third time DOD and FBI have sought a modification of  
16 the deadline to complete disclosures or submit supplemental materials pursuant to the Court's  
17 Order of September 30, 2013.

18        9.        The requested extension would not have a significant effect on the schedule for  
19 this case. Pursuant to the Court's Order, after all Defendants submit the supplemental materials,  
20 the parties will confer to discuss the timing for further proceedings, including the filing of any  
21 further dispositive motions in this case. The requested extension would not cause a significant  
22 delay in this process or affect any hearing or other proceeding on the Court's calendar.

23 In accordance with 28 U.S.C. § 1746, I declare and affirm under penalty of perjury that  
24 the foregoing is true and correct.

25 Executed at Washington, D.C. this 20th day of March, 2014.

/s/ Kathryn C. Davis  
KATHRYN C. DAVIS (DC Bar #985055)  
*Counsel for Defendants*

## CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2014, I electronically filed the foregoing document with the Clerk of the Court, using the CM/ECF system, which will send notification of such filing to the counsel of record in this matter who are registered on the CM/ECF system.

/s/ Kathryn C. Davis  
KATHRYN C. DAVIS